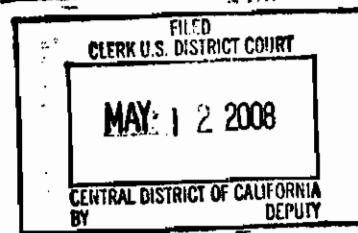


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I, Sandra Bell, do attest and certify on 5/14/08 that the accompanying document is a full, true and accurate copy of the original on file in my office, and in my legal custody.

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA



FILED
US DISTRICT COURT
DISTRICT OF NEBRASKA

MAY 19 2008

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

EDDIE JOHNSON,

Petitioner,

v.
S.A. HOLENCIK, Warden,

Respondent.

) Case No. ED CV 08-622-DSF (SH)

} MEMORANDUM AND ORDER
TRANSFERRING ACTION TO THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

I. INTRODUCTION

On May 7, 2008, petitioner, a prisoner in federal custody, filed a Petition for Writ of Habeas Corpus by a Person in Federal Custody ("Petition"), accompanied by a supporting Brief ("Brief"), ostensibly pursuant to 28 U.S.C. § 2241. Petitioner is currently incarcerated at FCI-Victorville, pursuant to a 121-month sentence imposed on April 28, 2003 following petitioner's conviction (pursuant to a plea agreement) in

1 the United States District Court for the District of Nebraska. (Petition at 1-2; Brief at
2 1-3). The Petition alleges that petitioner received ineffective assistance of counsel
3 based on his counsel's failure to object to petitioner being sentenced under the "crack
4 cocaine" guidelines, and on his counsel's failure to appeal petitioner's sentence.
5 (Petition at 3; Brief at 3-5, 7-22, Exhibit 1).

6

7 **II. DISCUSSION**

8 "Generally, motions to contest the legality of a sentence must be filed under
9 [28 U.S.C.] § 2255 in the sentencing court, while petitions that challenge the manner,
10 location, or conditions of a sentence's execution must be brought pursuant to § 2241
11 in the custodial court." Hernandez v. Campbell, 204 F.3d 861, 864 (9th Cir. 2000);
12 Doganiere v. United States, 914 F.2d 165, 169-70 (9th Cir. 1990). A prisoner may
13 file a habeas corpus petition under 28 U.S.C. § 2241 if "the remedy by motion [under
14 § 2255] is inadequate or ineffective to test the legality of his detention." 28 U.S.C. §
15 2255.¹ "Because Congress made a deliberate choice to give jurisdiction over § 2241
16 petitions and § 2255 motions to different courts, a district court is obligated to
17 determine whether a petition falls under § 2241, pursuant to the savings clause, or
18 under § 2255." Hernandez, supra, 204 F.3d at 866. Since petitioner does not claim
19 that he falls within the "savings clause" of § 2255, and since the Petition solely
20 challenges the legality of petitioner's sentence, this Court properly construes the
21 Petition as a § 2255 Petition.

22 A petition under § 2255 must be filed in the district of conviction. Id. at 866.
23 Petitioner was convicted and sentenced in the United States District Court for the
24 District of Nebraska. Accordingly, the United States District Court for the Central
25 District of California does not have jurisdiction over the Petition. To cure want of
26 jurisdiction, the Petition must be transferred to the United States District Court for
27 the District of Nebraska pursuant to 28 U.S.C. § 1631. See id. at 865 n. 6.

28

' This provision of § 2255 is referred to as the "savings clause."

III. ORDER

2 For the foregoing reasons, the Petition is transferred to the United States
3 District Court for the District of Nebraska for appropriate disposition as a § 2255
4 Petition.

5 | DATED: 5/12, 2008

Dale S. Fischer
DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

11 Presented by:
May 12, 2008

**STEPHEN J. HILLMAN
UNITED STATES MAGISTRATE JUDGE**